

## **B. Standard for Waiver of Study Area Definition**

As a general matter, waiver of Commission rules is appropriate where special circumstances warrant deviation from the general rule and waiver will serve the public interest.<sup>54</sup> The Commission “may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”<sup>55</sup> In the case of waivers of the rules freezing study area boundaries, the Commission applies a three part test: (1) whether the proposed change will adversely affect the Universal Service Support Program; (2) whether the state commission(s) having regulatory authority does not object to the change; and (3) whether the public interest will be served. Sandwich Isles shows below that grant of its Petition will be consistent with all three criteria, and that grant is proper under equitable principles and is necessary to prevent extreme hardship.

### **1. Impact on Universal Service Fund**

In 1995 the Commission concluded that study area changes would not be considered to have an adverse affect on the Universal Service Fund if grant of the waiver would not result in an annual aggregate shift in high cost support of an amount equal to or greater than one-percent of the total high cost fund for the pertinent funding year.<sup>56</sup> For funding year 2005, Sandwich Isles total high cost support will be well under one percent.

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<sup>54</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969; 47 C.F.R. 1.3.

<sup>55</sup> *Skyline* at para. 7, citing *Wait Radio* and *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1969).

<sup>56</sup> *Eagle* at 10-FCC Rcd 1774, *Skyline* at para. 15 and n.37. When Commission adopted the one-percent rule in 1995, high cost support did not include the substantial portion of carrier common line cost which was then recovered through interstate switched access charges. The CALLS and MAG orders caused substantial increases in the proportion of ILEC revenue requirements recovered through high cost support.

Based on USAC first quarter 2005 projections, Sandwich Isles total high cost support for the year will be less than four-tenths of one-percent.<sup>57</sup>

The USAC projections ultimately derive from data submitted by Sandwich Isles, which is updated quarterly. To date, Sandwich Isles' cost per loop is high, as it has been constructing basic infrastructure to serve the HHL developments. As additional homesteads on the six islands are awarded and people move in, the per line cost will go down substantially. In its 1997 Petition, and in a supplemental filing, Sandwich Isles produced extensive data relating to calculation of its high cost support.<sup>58</sup> Currently, all the relevant data are provided to USAC and NECA and will be made available to the Commission's staff if requested.

## **2. Consent of State Regulatory Authorities**

Sandwich Isles has met with both state agencies that regulate it, the DHHL and the HPUC and has confirmed that they have not expressed any opposition to a grant of the waivers requested. DHHL's statement is included as Appendix D and the HPUC will be sending its statement directly to the Commission.

## **3. Public Interest**

The 1934 Congressional statement of purpose for creation of the Commission is relevant to any public interest determination: "...to make available, so far as possible, to

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<sup>57</sup> USAC Quarterly Administrative Filling 2004, First Quarter 2005 Appendix HC01 at [www.universalservice.org/overview/filings](http://www.universalservice.org/overview/filings).  $(\$3,818,179 \times 4)/(\$976,904,832 \times 4) = .0039$ .

<sup>58</sup> Letter from Sylvia Lessee and Margaret Nyland to Gary Seigel and Adrian Wright, Aug. 4, 1997 (providing data re USF impact).

all the people of the United States, without discrimination ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”<sup>59</sup> In 1996 Congress added the specific provisions of Section 254 that provide principles for the *preservation and advancement* of universal service.<sup>60</sup> Since the 1984 freeze of study area boundaries, the Commission has repeatedly recognized a strong public interest benefit from the provision of significant improvements in service by the new carrier.<sup>61</sup>

Unique to this Petition is the fact that for the six and one half years since the Common Carrier Bureau’s grant of the now reversed waiver, Sandwich Isles, in reliance on that waiver, has been steadily investing large amounts of capital and has proceeded to fulfill the mandate of its license from DHHL by constructing state-of-the-art facilities to provide service on the HHL. As a result of the combination of \$166 million RUS capital funding to date, a reliable interstate revenue stream made possible through participation in the NECA access tariffs and pools, and Universal Service Support, Sandwich Isles has been able to extend service to over 4,000 new lots and almost 1,200 access lines in 20 new communities, and expects to expand service to an additional 14 communities during 2005. RUS approval of new Sandwich Isles’ loans is based on its strict standards of what is required to adequately serve the HHL.

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<sup>59</sup> 47 U.S.C. 151.

<sup>60</sup> 47 U.S.C. 254.

<sup>61</sup> See, e.g., *Searsboro Telephone Company, Inc. and Killduff Telephone Company Joint Petition for Waiver of the Study Area Boundary Freeze Codified in the Part 36, Appendix-Glossary of the Commission’s Rules*, Order, DA 04-2258, Jul. 27, 2004, at para 12; *Skyline* at para. 18; *Nemont Telephone Cooperative, Inc. et al., Joint Petition for Waiver of the Study Area Boundary Freeze Codified in the Part 36, Appendix-Glossary of the Commission’s Rules*, 18 FCC Rcd 838, 843 (2003).

While further expansion is necessarily tied to the rate of development of the HHL, Sandwich Isles' long-range plan, and the requirement of its License, is to provide local service and high-speed Internet connectivity to all HHL communities, and to link all the communities together. Accordingly, Sandwich Isles is presently constructing a fiber network to connect its service areas on the 6 islands, which will permit the delivery of the basic level of telephone service promised by Congress in the 1934 and 1996 Communications Acts. Additionally, because of the advancement in technology this same network will also be able to deliver broadband and other advanced services to all HHL areas in accordance with the policy goals of Congress.

Sandwich Isles recently submitted a multimillion dollar broadband loan application to RUS for new construction which includes additional switching facilities to serve new HHL subdivisions, deploy additional ADSL equipment, and comply with CALEA requirements; local outside plant distribution facilities estimated to pass another 2,500 lots; completion of the terrestrial underground fiber transport network, and a network operations and switching center complex. With these added facilities, which Sandwich Isles expects to construct during the next 2 years, basic infrastructure will be in place to serve the longer term communications needs of the HHL. These expenditures along with the current provision of telecommunications services to over 1,000 existing customers of Sandwich Isles that did not previously have service supports the waiver of the definition of study area and serves the public interest as similarly found in *Skyline* at page 8.

In addition to its consistency with prior waiver grants,<sup>62</sup> Sandwich Isles' Petition presents unique public interest factors that are relevant only to its service area; especially the critical role the provision of modern telecommunications will play in realizing the long delayed goal of providing an opportunity for native Hawaiians to successfully establish a homestead. In the modern environment, the availability of communications services is critical to the economic feasibility of rural communities. Although the primary responsibility as fiduciary for the HHL held in trust was transferred to the state in 1959, the United States retains a duty to ensure that the state complies with the compact embedded in the Admissions Act.

By granting the waivers based on the merits of this Petition, the Commission will be fulfilling its role as an agency of the United States to regulate in a manner which permits the state to fulfill its trustee functions. The continued operation of these facilities and the completion of their build out are critical to the ability of the state to meet the trust responsibilities established by Congress in 1921, but only now beginning to be realized. Without the waivers requested in this Petition, Sandwich Isles will necessarily fail and beneficiaries of the trust will be without the communications services necessary to make development of the trust lands possible.

Denial of the current waiver petition would reduce Sandwich Isles to competitive carrier status thereby eliminating most its interstate access revenue and all of its Universal Service Support. Replacement of those revenues by increased local and

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<sup>62</sup> In *TelHawaii* the Commission granted a study area waiver for an area already being served by GTE Hawaiian Telephone. *TelHawaii* at para. 25.

intrastate charges would result in unaffordable rates and render hollow the admonition of Section 254 that rural rates should be comparable to urban rates. The loss of revenues would create a serious risk of default on the RUS loans, with the result that the United States government would inherit the unprofitable operation.

Finally, Sandwich Isles recognizes that ILECs have a legitimate concern that grant of its Petition does not establish precedent by which a new company can be created wherever a new housing development is built on land previously farmed or forested where there was no reason to install communications facilities. Because of the unique status of the land being served by Sandwich Isles and the role of the state agency to manage a trust originally created by Congress, the situation presented here is incapable of being duplicated anywhere in the country, including on Indian reservations.<sup>63</sup>

### **C. Parts 36 and 69 Rule Waivers**

Although Sandwich Isles' 1997 Petition requested waiver of Sections 36.611 and 36.612 because it lacked historical data, such data is now available and has been regularly filed with NECA and USAC since 1998. The request is therefore moot as to waiver of the historical data requirement on a prospective basis,<sup>64</sup> and is renewed in this Petition only to the extent the Commission may conclude that it is necessary to reinstate the Bureau's waiver for the initial period until historical data became available.

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<sup>63</sup> See, note 26, *supra*.

<sup>64</sup> *Skyline* at para. 23.

The Commission's Order established the need for Sandwich Isles to request waiver of the requirements that a carrier be an incumbent ILEC to receive USF support based on its own cost and to participate in the NECA tariffs and pools. The public interest considerations supporting waiver of these rules are the same as those supporting the study area rules, namely that without these waivers, Sandwich Isles interstate revenues will be insufficient to support the continuation of service to its existing subscribers, much less continue to deploy facilities to coincide with the development of communities on the HHL.

### **III CONCLUSION**

The Commission's Decision in *GTE Hawaiian Tel.* has created significant uncertainty and disruption in Sandwich Isles' multi-year plans to continue the extension of service to the areas of the HHL planned for development over this decade. Although Sandwich Isles believes the decision that its service area is within the now Verizon Study Area was incorrect, it has chosen to apply for the waiver as directed by the Commission *without prejudice to its position that no waiver is necessary with respect to Sandwich Isles operations on the HHL.* Nevertheless, the combination of the lack of any clear definition in the Commission's rules for determining the precise boundaries of a study area, together with the Hawaii specific facts which demonstrate that the vast majority of the HHL were never included in GTE's "operations," provide substantial reason why the Commission should grant Sandwich Isles' Petition.

Sandwich Isles Communications, Inc. has shown that special circumstances exist which justify waiver of the definition of study area and related rules, and that in the absence of such waivers, the purpose of the rules and the 1934 and 1996 Communications Acts will not be met. Specifically, Sandwich Isles has shown that grant of the waivers will not have an adverse impact on the Universal Service Fund, that the two state agencies concerned do not object to grant of the requested waivers, and that the public interest would be served by grant of the waivers. In the course of establishing the legal and historical context of its petition Sandwich Isles has explained that the unique circumstances of provision of service to the Hawaiian Home Lands are not capable of occurring in any other state.

Sandwich Isles continued operation and completion of its build out of the HHL are critical to the ability of the state to meet its trust responsibilities and the ability of Congress to meet its promise of universal service to all Americans, as established in the 1934 Communications Act and reaffirmed in the 1996 Communications Act. Without the waivers requested in this Petition, Sandwich Isles will necessarily fail and beneficiaries of the trust will be without communications services. Sandwich Isles and HHL are a microcosm of the situation the rural areas in the nation faced in the 1930's when AT&T refused to extend service outside of the profitable urban areas.

In the final analysis, the refusal of GTE to serve rural areas is a scenario repeated in the many rural areas "assigned" to large carriers throughout the country and which can only be remedied by a strong universal service program. Only if Congress and the nation



stay fully committed to supporting affordable communications services in sparsely populated rural areas and this Commission implements public policy consistent with our nation's goals will significant investments in rural telecommunications infrastructure continue. There is high risk associated with accepting the obligation to serve in these high cost areas of America. RLECs, like Sandwich Isles, whose management and employees live and work in the communities they serve are prepared and dedicated to fulfill not only the promise of universal service, but also the greater goal of broadband communications throughout rural America.

Respectfully submitted

Sandwich Isles Communications, Inc.

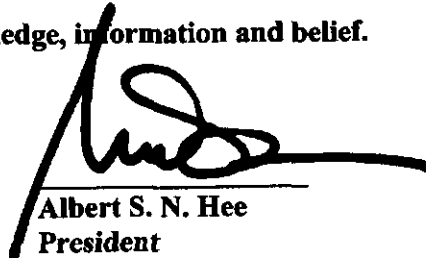
By David Cosson  
David Cosson  
Its Attorney

Kraskin, Moorman & Cosson, LLC  
2120 L St., N.W., Suite 520  
Washington, D.C. 20037

202 296 8890

**DECLARATION OF ALBERT S.N. HEE**

**I, Albert S.N. Hee, President of Sandwich Isles Communications, Inc.,  
do hereby declare under penalties of perjury that I have read the foregoing  
“Petition for Waiver” and that the information contained therein is true and  
accurate to the best of my knowledge, information and belief.**

A handwritten signature in black ink, appearing to read 'A. Hee', is written over a horizontal line.

**Albert S. N. Hee  
President  
Sandwich Isles Communications Inc.**

**December 22, 2004**

# **APPENDIX A**



**WAIMEA**  
15,061.000 Ac.

**MOLOAA**  
315.970 Ac.

**ANAHOLA/  
KAMALOMALO**  
4,228.447 Ac.

**KAPAA**  
16.965 Ac.

**WAILUA**  
526.180 Ac.

**KEKAHA**  
51.532 Ac.

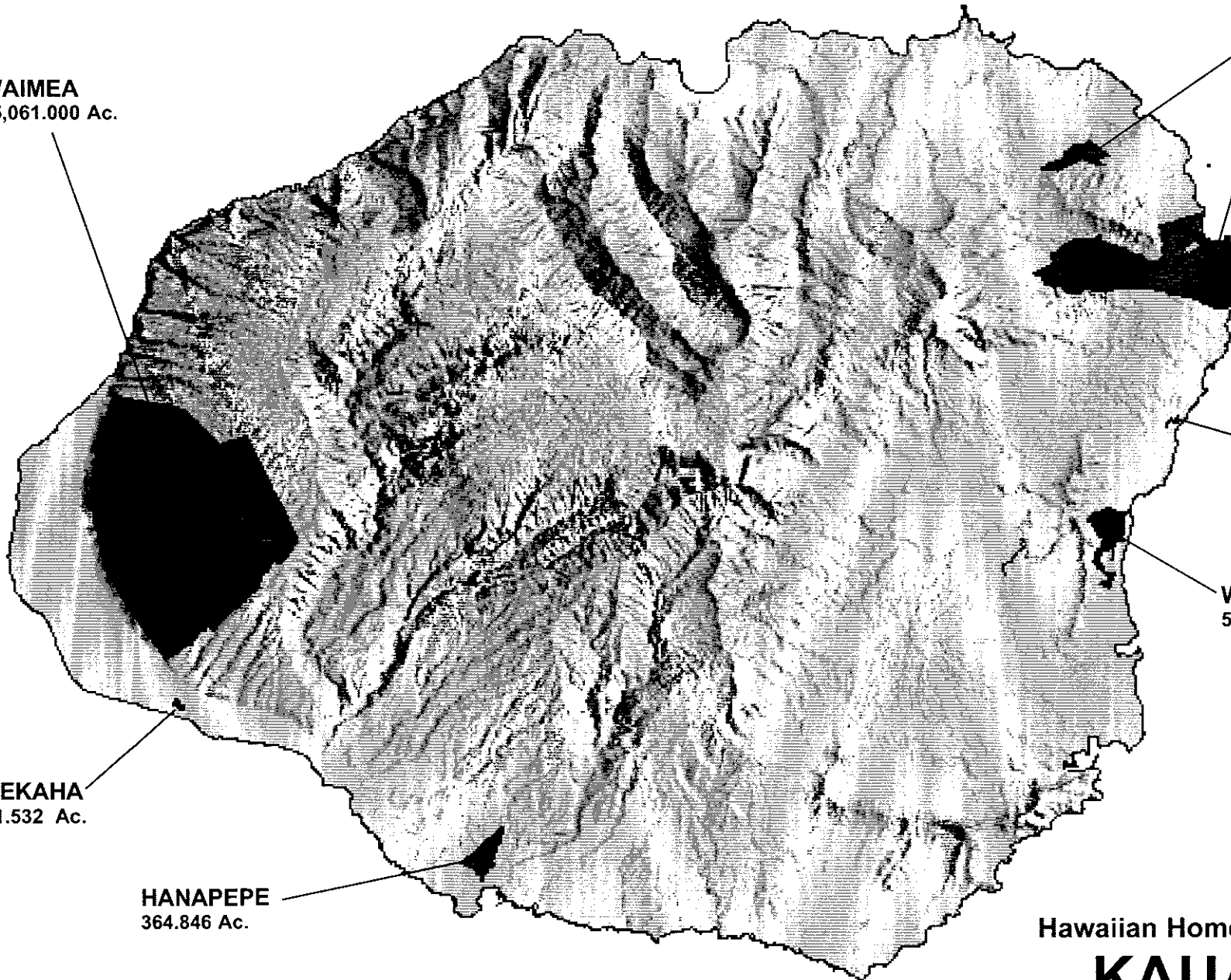
**HANAPEPE**  
364.846 Ac.

Hawaiian Home Lands

**KAUAI**

20,564.940 ACRES

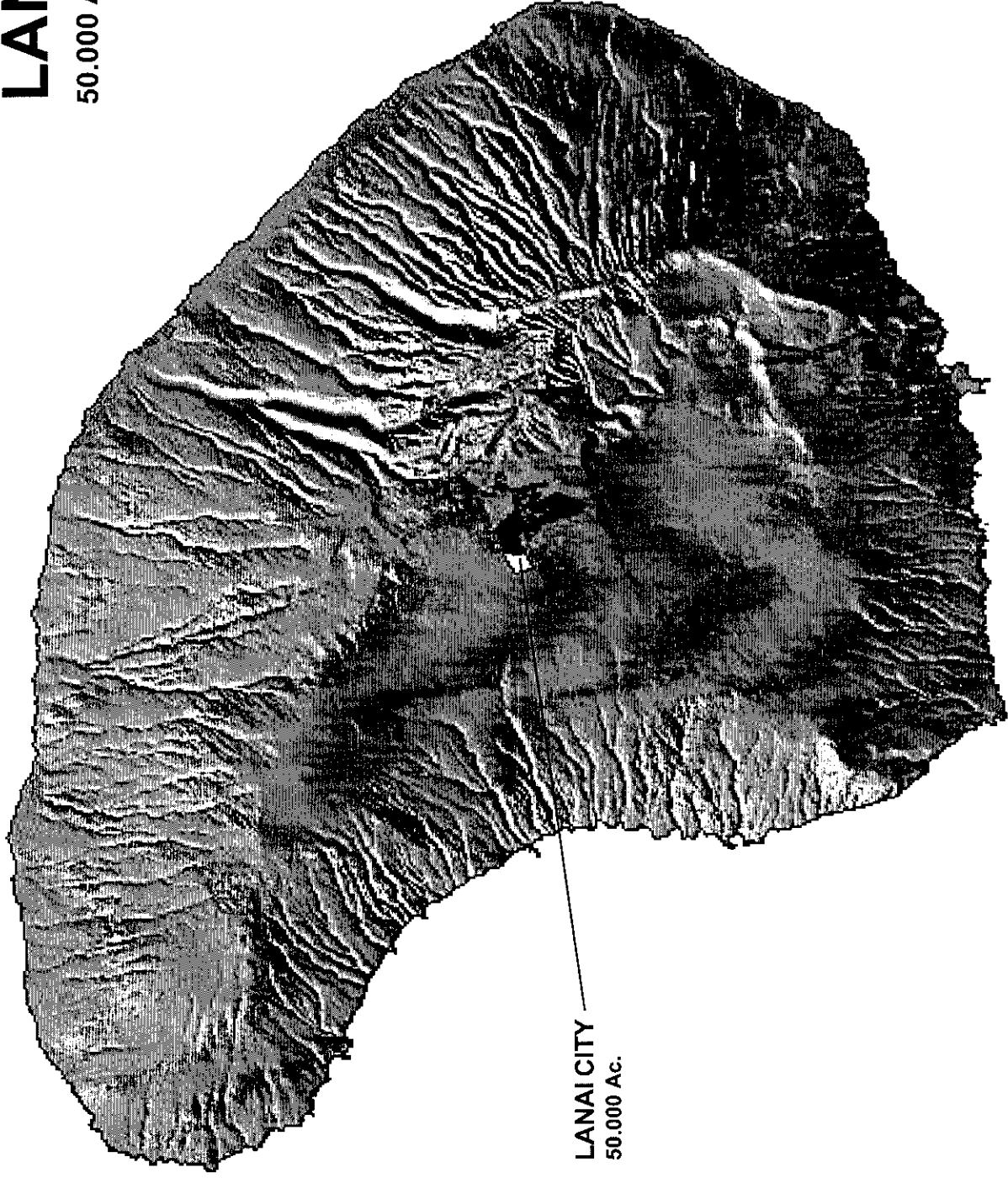
(6/30/2003)



Hawaiian Home Lands

# LANAI

50,000 ACRES



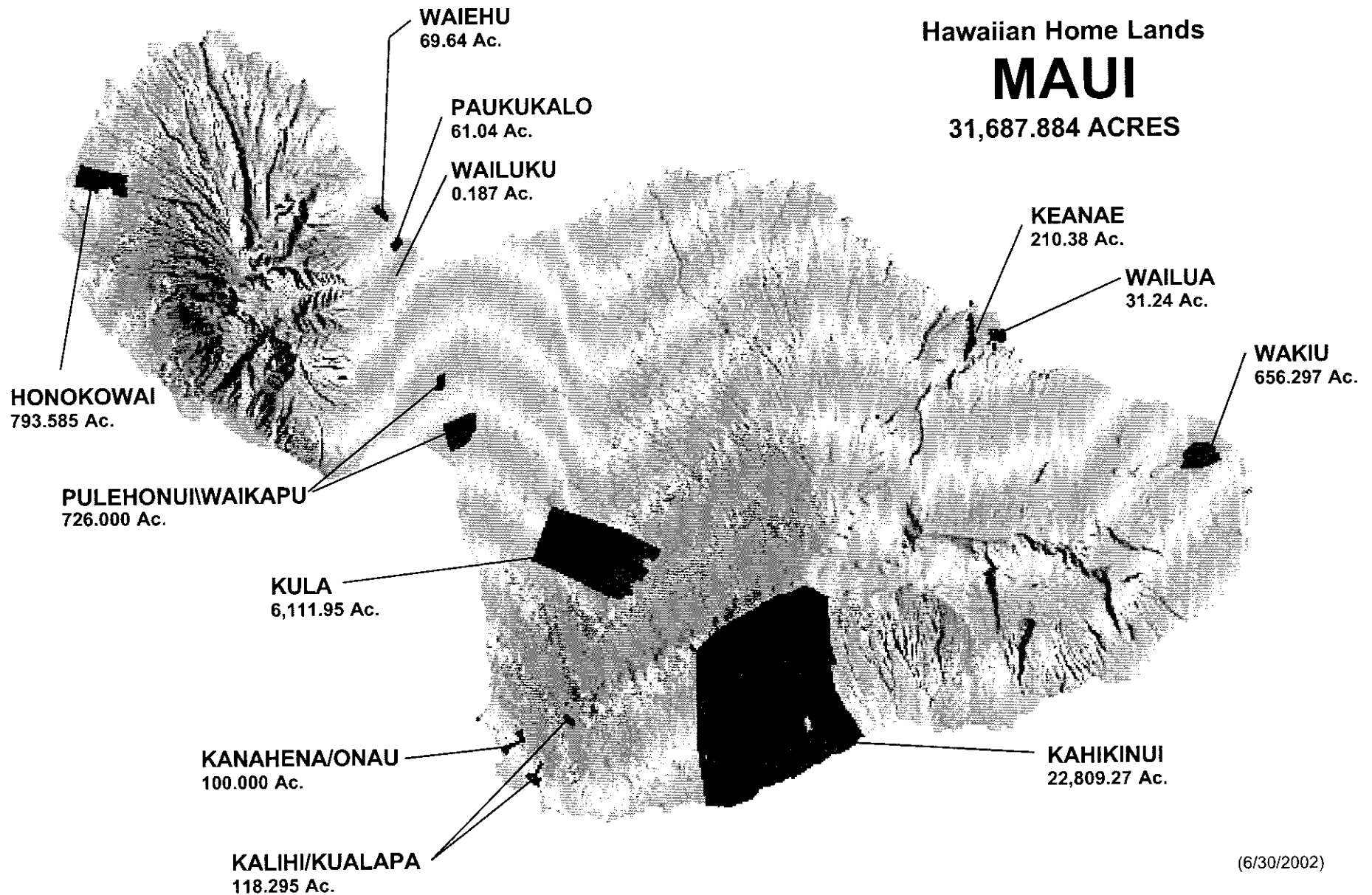
LANAICITY  
50,000 Ac.

(6/30/2002)

Hawaiian Home Lands

# MAUI

31,687.884 ACRES

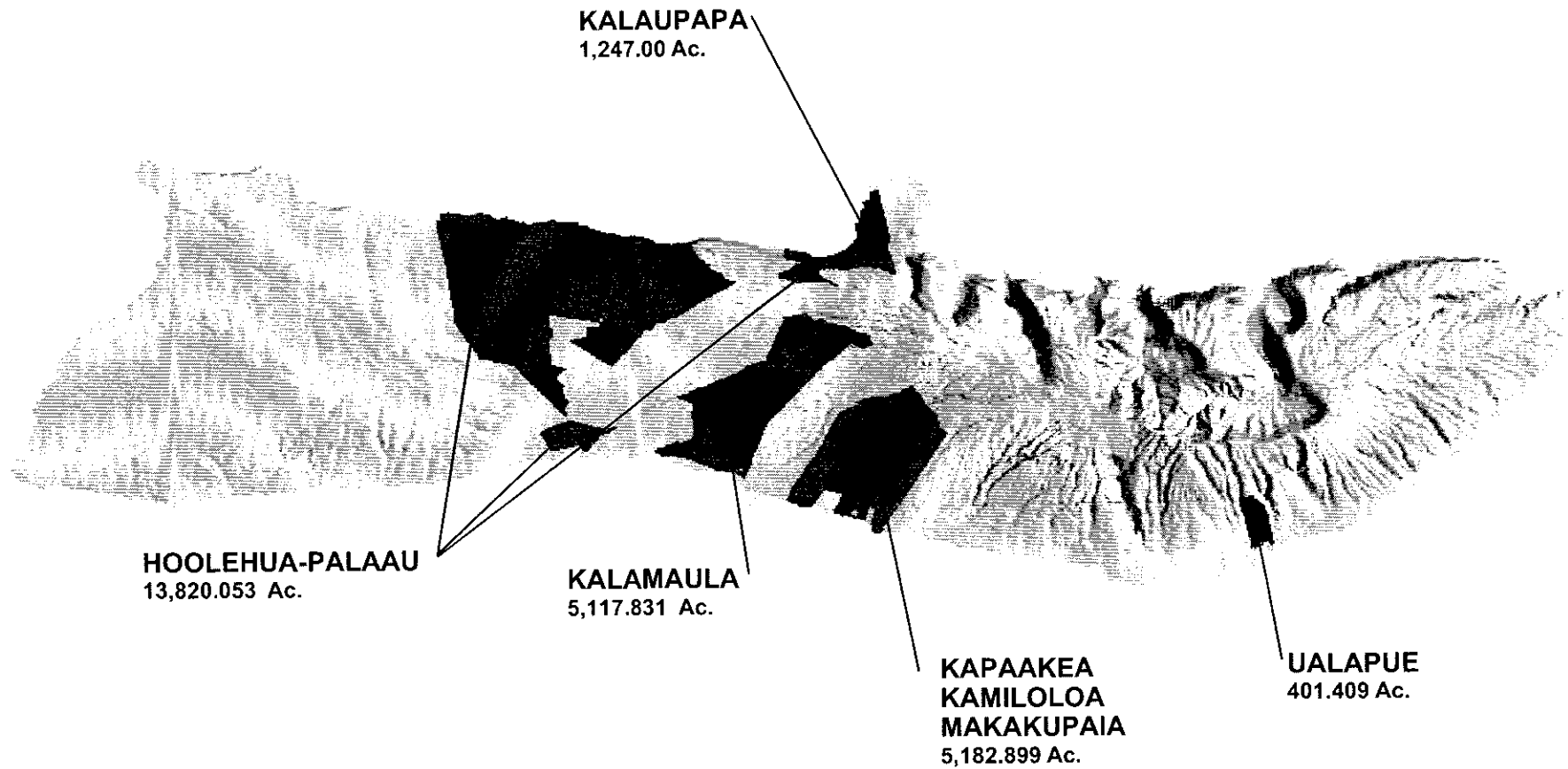


(6/30/2002)

Hawaiian Home Lands

# MOLOKAI

25,769.192 ACRES



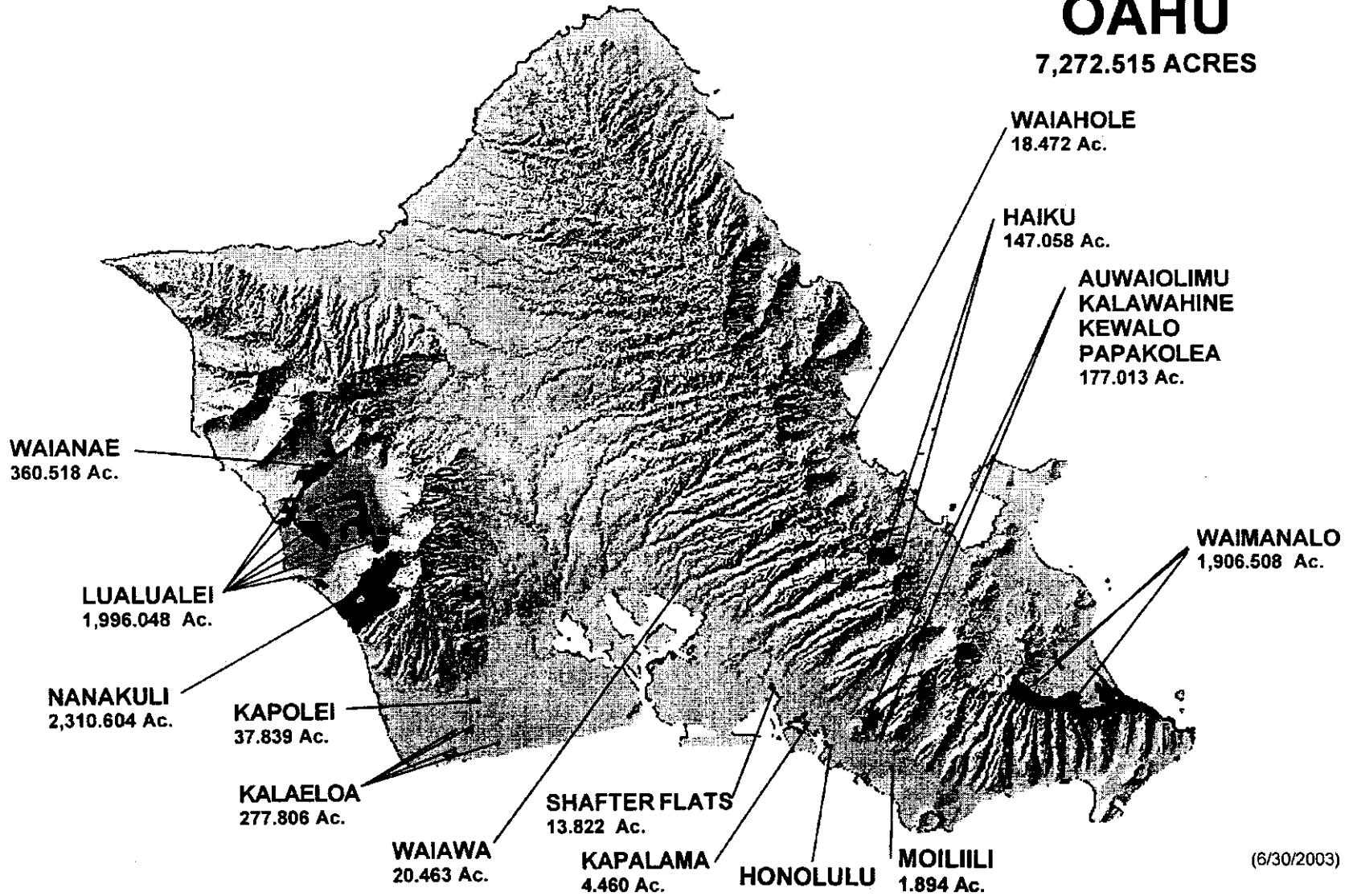
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Hawaiian Home Lands

# OAHU

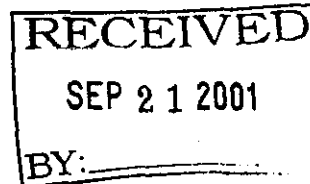
7,272.515 ACRES



(6/30/2003)

# **APPENDIX B**

BENJAMIN J. CAYETANO  
GOVERNOR



DENNIS R. YAMADA  
CHAIRMAN

GREGORY G.Y. PAI, Ph.D.  
COMMISSIONER

DAVID MORIHARA  
COMMISSIONER

**STATE OF HAWAII**  
**PUBLIC UTILITIES COMMISSION**  
**DEPARTMENT OF BUDGET AND FINANCE**  
485 S. KING STREET, #103  
HONOLULU, HAWAII 96813

9/24 COPY TO AL.P.

September 20, 2001

Ms. Magalie R. Salas  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Ms. Irene Flannery  
Vice President, High Cost and Low Income Division  
Universal Service Administrative Company  
2120 L Street, N.W., Suite 600  
Washington, D.C. 20037

RE: CC Docket No. 96-45 - State Commission Certification for USF  
(47 U.S.C. 254(e); 47 CFR 54.314)

Dear Ms. Salas and Ms. Flannery:

Pursuant to the Federal Communications Commission's Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, adopted on May 10, 2001, and released on May 23, 2001, this letter is written to certify that the following rural incumbent local exchange carrier, also classified as an eligible telecommunications carrier, should continue to receive federal high-cost support funds in 2002 in accordance with the above referenced statute and federal rule:

Sandwich Isles Communications, Inc.  
(SAC: 623021)  
Pauali Tower, 27<sup>th</sup> Floor  
1001 Bishop Street  
Honolulu, HI 96813


Ms. Magalle R. Salas  
Ms. Irene Flannery  
September 20, 2001  
Page 2

The company has certified to the Hawaii State Public Utilities Commission (Commission) that it will only use the federal high-cost support for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with 47 United States Code § 254(e). See attachment. Thus, based on the company's submission, the Commission certifies that the funds received for the federal high-cost support will only be used as intended under federal law.

If this letter does not fully satisfy the requirements for state certification for carriers to receive high-cost support for 2002, we hereby request a waiver of the October 1, 2001 deadline to correct any deficiencies.

Please contact Mr. Paul Shigenaga, Administrative Director, at (808) 586-2028 to address any questions that you may have.

Very truly yours,

  
Dennis R. Yamada  
Chairman

DY:LK:ac

c: / Albert S.N. Hee, President  
Sandwich Isles Communications, Inc.  
(w/o attachment)

FILED

CERTIFICATION STATEMENT  
SANDWICH ISLES COMMUNICATIONS, INC.  
PURSUANT TO FCC ORDER NO. 01-157

2001 SEP 13 A 11:09

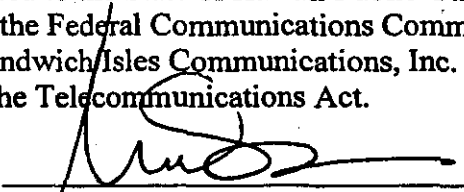
Section 254(e) of the Telecommunications Act of 1996 requires that an eligible telecommunications carrier receiving federal universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." In FCC Order No. 01-157 issued May 23, 2001, the Federal Communications Commission concluded "that states should be required to file annual certification with the Commission to ensure that carriers use universal service support 'only for the provision, maintenance and upgrading of facilities and services for which the support is intended' consistent with Section 254(e)." Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, ¶187. Accordingly, the undersigned states and verifies under oath as follows:

1. I am an officer of Sandwich Isles Communications, Inc., which is an eligible telecommunications carrier for receiving federal universal service support under Section 214(e) of the Telecommunications Act of 1996.

2. All federal universal service support funds received by Sandwich Isles Communications, Inc. during the current calendar year will be used in a manner consistent with Section 254(e); that is, for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The company will continue to comply for the period January 1, 2002, through December 31, 2002, to be eligible for federal universal service support.

3. This Certification Statement is provided to the State of Hawaii Public Utilities Commission to enable the Commission to certify to the Federal Communications Commission that federal universal service support received by Sandwich Isles Communications, Inc. will be used in a manner consistent with Section 254(e) of the Telecommunications Act.

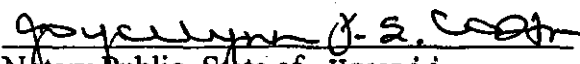
12 SEP 01  
Date

  
Signature

Albert S.N. Hee, President  
Print Name and Title

STATE OF HAWAII )  
 ) ss  
CITY AND COUNTY OF HONOLULU )

On this 12th day of September, 2001, before me personally appeared Albert S.N. Hee, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

  
Notary Public, State of Hawaii  
Joycelynn P. S. Costa  
Print Name  
My Commission Expires: 2-1-2004

LS.

BENJAMIN J. CAYETANO  
GOVERNOR

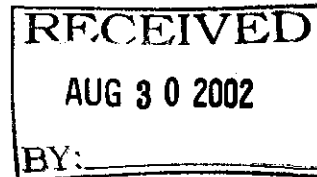


WAYNE H. KIMURA  
CHAIRMAN

JANET E. KAWELO  
COMMISSIONER

**STATE OF HAWAII**  
**PUBLIC UTILITIES COMMISSION**  
**DEPARTMENT OF BUDGET AND FINANCE**  
465 S. KING STREET, #103  
HONOLULU, HAWAII 96813

August 29, 2002



**VIA CERTIFIED MAIL #7000 0600 0027 7123 1235**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Portals II, TW-A325  
Washington, D.C. 20554

**VIA CERTIFIED MAIL #7000 0600 0027 7123 1228**

Ms. Irene Flannery  
Vice President, High Cost and Low Income Division  
Universal Service Administrative Company  
2120 L Street, N.W., Suite 600  
Washington, D.C. 20037

Dear Ms. Dortch and Ms. Flannery:

Re: CC Docket No. 96-45 – State Commission Certification for USF  
(47 U.S.C. 254(e); 47 CFR 54.314)

Pursuant to the Federal Communications Commission's Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, adopted on May 10, 2001, and released on May 23, 2001 (FCC 01-157), this letter is written to certify that the following rural incumbent local exchange carrier, also classified as an eligible telecommunications carrier, should continue to receive federal high-cost support funds in 2003 in accordance with the above referenced statute and federal rule:

Sandwich Isles Communications, Inc. (Sandwich Isles)  
(SAC: 623021)  
Pauahi Tower, 27<sup>th</sup> Floor  
1001 Bishop Street  
Honolulu, HI 96813

Ms. Marlene H. Dortch  
Ms. Irene Flannery  
August 29, 2002  
Page 2

Sandwich Isles has certified to the Hawaii State Public Utilities Commission (Commission) that it will use all federal service support funds that it receives for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with 47 United States Code § 254(e), and that it will comply with the requirements to be eligible for federal universal service support. See attached Certification Statement dated August 22, 2002. Based on Sandwich Isle's submission and representation, the Commission hereby certifies that the funds that Sandwich Isles receives for the federal universal service support will only be used as intended under federal law.

If this letter does not fully satisfy the requirements for state certification of carriers to receive federal universal service support for 2003, we hereby request a waiver of the October 1, 2002 deadline to correct any deficiencies.

Please contact Ji Sook (Lisa) Kim, Commission Counsel, at (808) 586-2020 to address any questions on this matter.

Very truly yours,

  
Wayne H. Kimura  
Chairman

WHK:JSK:eh

Attachment

c: Albert S.N. Hee, President /  
Sandwich Isles Communications, Inc. (w/o attachment)

LINDA LINGLE  
GOVERNOR



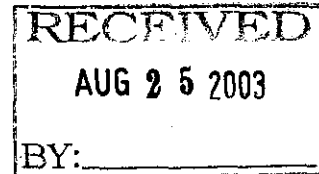
**STATE OF HAWAII**  
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CARLITO P. CALIBOSO  
CHAIRMAN

WAYNE H. KIMURA  
COMMISSIONER

JANET E. KAWELO  
COMMISSIONER

August 22, 2003



Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Portals II, TW-A325  
Washington, D.C. 20554

Ms. Irene Flannery  
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2120 L Street, N.W., Suite 600  
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(SAC: 623021)  
Paahli Tower, 27<sup>th</sup> Floor  
1001 Bishop Street  
Honolulu, HI 96813



Ms. Marlene H. Dortch  
Ms. Irene Flannery  
August 22, 2003  
Page 2

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If this letter does not fully satisfy the requirements for state certification of carriers to receive federal universal service support for 2004, we hereby request a waiver of the October 1, 2003 deadline to correct any deficiencies.

Please contact Steven J. Iha, Acting Administrative Director, at (808) 586-2020 to address any questions on this matter.

Sincerely,



Carlito P. Caliboso  
Chairman

CPC:JSK:eh

Attachment

c: Division of Consumer Advocacy, DCCA (w/ attachment)  
Albert S.N. Hee, Sandwich Isles (w/o attachment) ✓

LINDA LINGLE  
GOVERNOR



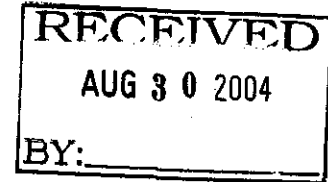
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**DEPARTMENT OF BUDGET AND FINANCE**  
465 S. KING STREET, #103  
HONOLULU, HAWAII 96813

CARLITO P. CALIBOSO  
CHAIRMAN

WAYNE H. KIMURA  
COMMISSIONER

JANET E. KAWELO  
COMMISSIONER

August 27, 2004



Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 - 12<sup>th</sup> Street, S.W., Room TW-A306  
Washington, D.C. 20554

Ms. Irene Flannery  
Universal Service Administrative Company  
2000 L Street, N.W., Suite 200  
Washington, D.C. 20036

RE: CC Docket No. 96-45 – State Commission Certification for USF  
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Dear Ms. Dortch and Ms. Flannery:

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1001 Bishop Street  
Honolulu, HI 96813

Ms. Marlene H. Dortch  
Ms. Irene Flannery  
August 27, 2004  
Page 2

Sandwich Isles has certified to the Hawaii State Public Utilities Commission ("Commission") that it will use all federal service support funds that it receives for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with 47 United States Code § 254(e), and that it will comply with the requirements to be eligible for federal universal service support. See attached Certification Statement dated August 24, 2004. Based solely on Sandwich Isles' submission and representations, the Commission hereby certifies that the funds that Sandwich Isles receives for federal universal service support will only be used as intended under federal law.

If this letter does not fully satisfy the requirements for state certification of carriers to receive federal universal service support for 2005, we hereby request a waiver of the October 1, 2004 deadline to correct any deficiencies.

Please contact Brooke K. Kane, Administrative Director, at (808) 586-2020 to address any questions on this matter.

Sincerely,



Carlito P. Caliboso  
Chairman

CPC:JSK:eh

Attachment

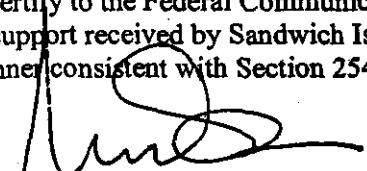
c: Division of Consumer Advocacy, DCCA (w/ attachment)  
Albert S.N. Hee, Sandwich Isles (w/o attachment)

**CERTIFICATION STATEMENT  
SANDWICH ISLES COMMUNICATIONS, INC.  
PURSUANT TO FCC ORDER NO. 01-157**

Section 254(e) of the Telecommunications Act of 1996 requires that an eligible telecommunications carrier receiving federal universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." In FCC Order No. 01-157 issued May 23, 2001, the Federal Communications Commission concluded "that states should be required to file annual certification with the Commission to ensure that carriers use universal service support 'only for the provision, maintenance and upgrading of facilities and services for which the support is intended' consistent with Section 254(e)." Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, para. 187. Accordingly, the undersigned states and verifies under oath as follows:

1. I am an officer of Sandwich Isles Communications, Inc., which is an eligible telecommunications carrier for receiving federal universal service support under Section 214(e) of the Telecommunications Act of 1996.
2. All federal universal service support funds received by Sandwich Isles Communications, Inc. during the current calendar year will be used in a manner consistent with Section 254(e); that is, for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The company will continue to comply for the period January 1, 2005, through December 31, 2005, to be eligible for federal universal service support.
3. This Certification Statement is provided to the State of Hawaii Public Utilities Commission to enable the Commission to certify to the Federal Communications Commission that federal universal service support received by Sandwich Isles Communications, Inc. will be used in a manner consistent with Section 254(e) of the Telecommunications Act.

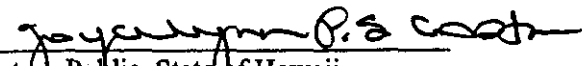
8/24/04  
Date

  
Signature  
Albert S.N. Hee, President  
Print Name and Title

STATE OF Hawaii )  
CITY AND COUNTY OF Honolulu ) ss

On this 24th day of August, 2004, before me personally appeared Albert S.N. Hee, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

LS.

  
Notary Public, State of Hawaii  
Joycelynn P.S. Costa  
Print Name  
My Commission Expires: 2-1-08

# **APPENDIX C**

AMIN J. CAYETANO  
GOVERNOR



**COPY**

original filed  
w/ Rus

YUKIO NAITO  
CHAIRMAN

JOHN P. SPIERLING  
COMMISSIONER

DENNIS R. YAMADA  
COMMISSIONER

**STATE OF HAWAII  
PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
485 S. KING STREET, #103  
HONOLULU, HAWAII 96813**

September 20, 1995

Albert S.N. Hee  
Sandwich Isles Communications, Inc.  
Pauahi Tower, Suite 1520  
1001 Bishop Street  
Honolulu, Hawaii 96813

Dear Mr. Hee:

Your letter of September 1, 1995, requests responses to two questions. The questions stem from responses made by the Hawaii Public Utilities Commission's Chief Counsel, Clay Nagao, to questions raised by Mr. Ken B. Chandler of the U.S. Department of Agriculture. We respond to the questions as follows.

Your first question is whether the PUC agrees that the Hawaiian Homes Commission has the power to authorize a public utility to provide service on its lands. Our response is that, pursuant to section 207(c)(1) of the Hawaiian Homes Commission Act of 1920, it appears that the Hawaiian Homes Commission has the power to grant licenses and easements for telephone lines and other utility services.

Your second question is whether the PUC agrees that public utilities do not have the ability to use their power of eminent domain to obtain easements for utility services on Hawaiian Homes lands. Our response is that, pursuant to the State of Hawaii Attorney General's opinion no. 60-77, it appears that a public utility may not acquire any Hawaiian Homes land through eminent domain proceedings, in spite of the right of eminent domain granted to public utilities by Hawaii Revised Statutes section 101-4.

I hope these responses will clarify any confusion that may have been generated by Mr. Nagao's July 18, 1995, letter to Mr. Chandler.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Yukio Naito", written over a horizontal line.

Yukio Naito  
Chairman

YN:CN:ac

# **APPENDIX D**

LINDA LINGLE  
GOVERNOR  
STATE OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P.O. BOX 1879  
HONOLULU, HAWAII 96805

MICAH A. KANE  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

BEN HENDERSON  
DEPUTY TO THE CHAIRMAN

KAULANA H. PARK  
EXECUTIVE ASSISTANT

December 23, 2004

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Ms. Dortch:

Re: AAD 97-82: Sandwich Isles Communications, Inc., Petition for Study Area Waiver

Sandwich Isles Communications, Inc. (SIC) was issued an exclusive license by the State of Hawaii, Department of Hawaiian Home Lands (DHHL) on May 9, 1995 to provide telecommunications services on the trust lands we administer.

Additionally, on May 14, 1997, DHHL designated SIC an eligible telecommunications carrier (ETC) under Section 214 of the 1996 Communications Act within our Hawaiian home lands properties. Subsequent to our initial designation and in response to the FCC issuing further qualifying rules, DHHL reconfirmed its ETC designation for SIC on June 2, 1998.

We now understand the FCC in the above referenced docket is requiring SIC to petition for a Study Area Waiver. For purposes of granting that waiver, DHHL fully supports SIC continuing to provide telecommunications services on Hawaiian home lands (HHL) and reaffirms its exclusive license issued in 1995.

Hawaiian home lands are held in trust for the benefit of native Hawaiians. They consist of over 70 non-contiguous parcels totaling over 200,000 acres located on the 6 major Hawaiian Islands. The provision of modern, reliable telecommunications infrastructure and services is important to our mission to rehabilitate our beneficiaries. These services impact quality of life – health, education, personal safety; and serve as a platform for economic development. Prior to issuing SIC the license, there were many beneficiaries living on HHL that did not have phone service due to the high cost either they or DHHL would have to pay to install the infrastructure.



Ms. Marlene H. Dortch  
December 23, 2004  
Page 2

Today these beneficiaries enjoy the same service that is available in urban areas. Additionally, SIC is now investing tens of millions of dollars to pay for the communications infrastructure in the areas DHHL is currently developing.

SIC has been able to provide this service without contributions in aid of construction from either DHHL or its beneficiaries. This has allowed DHHL to utilize the funds it previously would be required to spend to install communications infrastructure to fulfill our mission.

Aloha,

A handwritten signature in black ink, appearing to read "Micah A. Kane".

Micah A. Kane, Chairman  
Hawaiian Homes Commission

cc: Sandwich Isles Communications, Inc.